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MEMOANDUM
Via Email

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From: Geoffrey Parker

cc: Rebecca Bernard, Trustees for Alaska); Bob Shavelson, Cook Inlet Keeper

Re: (1) Interagency meeting, Chuitna Coal, Tuesday, 8/22/06, and Wednesday, 8/23/06
(2) Connected, cumulative, similar actions/cumulative impacts of Chuitna coal, Agrium, Pebble

I hope that during the upcoming meeting each of you will devote substantial time, thought and discussion, and make a complete record of agency views, regarding whether the scope of the EIS for Chuitna coal must include Agrium's proposed coal gasification plant at Nikiski and Pebble Mine. You probably know by now that some of us filed comments believe that these projects must be analyzed in a single EIS. Common sense indicates that PacRim would not proceed without a prospective purchaser, which appears to be Agrium, and Agrium would not consider a huge 350 MW coal-gasification plant generating 250 MW of excess power to the grid without a purchaser of that power, and the only one on the horizon is Pebble.

I have been asked to highlight the issue of connected, cumulative and similar actions and cumulative impacts with respect to these projects. As you know, the starting point is 40 CFR 1508.25 (emphasis added), which provides:

Sec. 1508.25 Scope. Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Sec. 1502.20 and 1508.28). To determine the scope of environmental impact

statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

- (a) Actions (other than unconnected single actions) which may be:
 - (1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:
 - (i) Automatically trigger other actions which may require environmental impact statements.
 - (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
 - (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.
 - (2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.
 - (3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.
- (b) Alternatives, which include:
 - (1) No action alternative.
 - (2) Other reasonable courses of actions.
 - (3) Mitigation measures (not in the proposed action).
- (c) Impacts, which may be: (1) direct; (2) indirect; (3) cumulative.

To highlight the issues, I am sending to you electronically three other documents with this and a subsequent email.

(1) A 175-page, July 2006, DOE study of using PacRim's Chuitna coal project as the feedstock for an Agrum coal gasification plant at Nikiski.

This DOE study¹ views development of Chuitna coal and an Agrum coal gasification plant as one project. Although the DOE study makes passing reference to PacRim's alleged

¹ It helps to avoid confusion about the term "phases." The DOE study is a "Phase I" study of an Agrum supplied by PacRim's Chuitna coal project. "Phase II" of DOE's study was initially intended to be a generalized study for locating a similar plant elsewhere in Cook Inlet. During the course of "Phase I," it was decided that the "Phase II" would be at Healy. Not to be confused, Agrum is doing a separate "Phase II" study. Agrum's grant in the capital budget is partial funding for a "Phase II" "Kenai Blue Skies" study at Nikiski of a 350 MW coal-gasification plant that would produce 250 MW excess to the grid -- enough for Pebble. It is easy to confuse DOE's "Phase II" (Healy) for Agrum's "Phase II" (Nikiski).

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plans to sell coal outside of Alaska, the DOE study -- like the EPA scoping documents -- does not identify any specific potential purchaser or even any progress by PacRim in seeking such purchasers. The study concludes that Chuitna coal is more economic than Healy coal for purposes of a coal gasification plant at Agrum's site. PacRim and Agrum were active participants in the study and received the attached pre-publication draft in late July 2006 according to my records. Therefore, when EPA scoping documents issued to the public fail to mention Agrum, I conclude that someone is not being straightforward. I suspect that PacRim and Agrum have not been forthcoming to EPA and other federal and state agencies about PacRim supplying coal to Agrum. It is hard to believe that PacRim did not think to mention Agrum as a prospective purchaser when PacRim and Agrum were both involved in the ongoing DOE study at the same time PacRim was approaching EPA.

All federal agencies involved in this NEPA process need to correct the obvious omission of Agrum from the scoping documents. My clients' comments recommend re-issuing the scoping documents.

Finally, a detail: Although this electronic version is titled a "pre-publication draft," I understand that it is final as such, even though I do not see it posted yet on DOE's NETL site.

(2) Scoping comments which I filed for my clients, Trout Unlimited, Bob Gillam and others, before I obtained the DOE study.

The original sent to Ms. Shaw attaches five documents (not attached here electronically). Among them are --

- (a) a November 2005 DVD recording of a presentation at an energy law seminar by the general manager of Homer Electric Association, Brad Janorschke, on the subject of supplying power to Pebble. HEA has contracted with Northern Dynasty to study supplying power to Pebble. Mr. Janorschke refers to the Agrum plant as Pebble's source of power and in fact it is the only source he mentions. He notes many synergistic relationships including common timing of Agrum and Pebble. (I also attached an Alaska Journal of Commerce article that makes similar statements linking Beluga, Agrum and Pebble.)
- (b) two Agrum documents submitted to the State. They show that Agrum would use Beluga coal.
- (c) media coverage (Anchorage Daily News) that PacRim's Chuitna project would supply Beluga coal to Agrum's gasification project.

A. The Issues of Connected, Cumulative and Similar Actions Warrant an EIS that Addresses PacRim, Agrum and Pebble Projects.

Regarding Pebble and Agrum, the DVD of Homer Electric is authoritative evidence that Pebble and Agrum are connected actions -- for five reasons. First, they are "closely related" due to the excess power to the grid that would supply Pebble. Second, Pebble "automatically

triggers” the need for that excess power. Third, Pebble “cannot proceed” unless actions to make that power available are “taken previously or simultaneously.” Fourth, because the DOE study concludes that a gasification plant producing only 12 MW excess to the grid (Pebble needs 275 MW according to HEA) is not efficient, Pebble and the larger Agrum designs -- that would produce either 70 MW excess to the grid (per DOE’s “Phase I” study) or 250 MW excess to the grid (per Agrum’s ongoing “Phase II” study of a 350 MW plant) – are “interdependent parts of a larger action and depend on the larger action for their justification.” Fifth, an Agrum plant designed to provide enough excess power to significantly supply Pebble appears to be by far the most likely alternative for that power (just as HEA says), because the only other scheme suggested to my knowledge is a hydroelectric proposal at Chakachamna that would back water up into the designated wilderness of Lake Clark Park and require an unlikely act of Congress.

Next, even if Pebble and Agrum were not viewed as “connected actions” for any of the above five reasons, they would still be viewed as “cumulative actions,” which when viewed one with the other, have “cumulatively significant impacts and should therefore be discussed in the same impact statement.”

Finally, they are similar actions due to “common timing” if not geography proximate enough to connect them physically, and the agencies should analyze them in the same impact statement because “the best way to assess adequately the combined impacts” of Pebble, Agrum and any reasonable alternatives for power “is to treat them in a single impact statement.”

Regarding PacRim and Agrum, the Agrum documents submitted to the State are authoritative evidence that Agrum and Beluga coal are likewise “connected actions” for the same reasons – in case anyone needs more than the DOE study.² Frankly, the media reports I attached to my comments for my clients were less authoritative, because they are simply media that links Agrum and PacRim’s Beluga coal. However, the DOE report resolves that matter.

In sum, HEA, Agrum, and DOE have provided quite credible evidence, which cannot in good faith be ignored, that PacRim, Agrum and Pebble must be analyzed in the same EIS as connected, cumulative or similar actions.

B. The Issue of Cumulative Impacts Warrants an EIS that Addresses PacRim, Agrum and Pebble Projects.

Even if the PacRim, Agrum and Pebble projects were not viewed as connected, cumulative or similar actions, they should still be viewed as having “cumulative impacts” in relation to each other, because each project is reasonably foreseeable.

² If PacRim is unable to offer immediate documentation that it has actual potential buyers outside of Alaska, then you know PacRim’s project is dependent on Agrum for purposes of scoping under 40 CFR 1508.25. Similarly, Agrum’s 350 KW plant is dependent of Pebble for such purposes.

PacRim's project is so tightly connected to Agrium's project as to be in effect one project, and this makes Agrium the reasonably foreseeable market and the Agrium project a reasonably foreseeable project. The DOE study is conclusive of on those points.

Ten facts demonstrate that Pebble is reasonably foreseeable for purposes of NEPA:

- (1) NDM has long been engaged in baseline studies necessary for NEPA compliance;
- (2) NDM has submitted applications for water rights that included detailed descriptions of the project;
- (3) NDM has said many times that it expects to apply for most permits in 2008;
- (4) ADOT has spent substantial public funds on geotechnical survey of a road from Willamsport to Pebble, and it is nonsense to believe that ADOT spends funds on planning roads that it cannot reasonably foresee building;
- (5) NDM has said that it has entered the development stage;
- (6) state and local governments (DNR and the Kenai Borough), which have permit authority over Pebble, have said that NDM is in the development stage;
- (7) NDM has spend about \$100 million thus far, and Rio Tinto recently added about \$90 million more, and all this indicates that Pebble is reasonably foreseeable;
- (8) Agrium, and the proponents of Chakachamna, would not likely proceed as they have if they have with respect to power if they did not foresee Pebble;
- (9) PacRim, which has not produced evidence of a market for its coal outside of Alaska, would not likely proceed as it has if PacRim did not foresee Pebble; and
- (10) Homer Electric and media say that the Agrium, PacRim and Pebble projects will come on line in the same time frame, and such statements could not be made if the projects were not reasonably foreseeable.

All this *behavior* is compelling evidence that Pebble is reasonably foreseeable. Any mere claims otherwise by NDM, Agrium, PacRim, ADOT, and Homer Electric would not be credible, because their *behavior* has already belied any such claims. So, there is no rational basis for agencies to rely on mere claims as a ground for saying that Pebble is not reasonably foreseeable. Behavior speaks volumes.

(3) Scoping comments of Cook Inlet Keeper and several environmental groups.

The comments by Cook Inlet Keeper, Trustees for Alaska and others similarly address PacRim, Agrium, and Pebble projects as connected actions and as cumulative impacts in relation to each other. However, these comments make an important point that my comments neglected – i.e., that this situation requires a more specific and broadly inclusive statement of purpose and need, because of the apparent linkages between the projects.

CONCLUSION

Common sense, 40 CFR 1508.25, the DOE study and host of other records sent to EPA are ample reason to conclude that the PacRim, Agrium and Pebble projects, and any alternative

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sources of power for Pebble and alternative designs for Agrum's plant must be considered in a single EIS.